IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

First Appeal No. 78 of 2005

Date of decision: 25th April, 2006

A.F.R. (Approved for Reporting)
Not Approved for Reporting

Initials of Judge

Date 25.04.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

FIRST APPEAL No. 78 of 2005

Smt. Vasundhara Aryani
W/o Shri Sanjay Kumar Shashi,
D/o Shri Vinod Prasad,
R/o Village Mainpura,
Danapur Cantt.,
Patna (Bihar) ….. Appellant

Versus

1. Shri Sanjay Kumar Shashi s/o Shri Punit Ram
   r/o 18-B, Vansthali Canal Road,
   Ballupur, Dehradun.
2. Principal Judge, Family Court,
   Dehradun ……..Respondents

Mr. V.K. Kohli, Senior Advocate a/b Mr. I.P. Kohli, Advocate for the appellant.
Mr. Alok Singh, Senior Advocate a/b Mr. D. Barthwal, Advocate for the respondent no. 1.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

PRAFULLA C. PANT, J. (Oral)

This appeal, preferred under Section 19 of the Family Court Act, 1984, is directed against the judgment and decree dated 05.08.2005 passed in O. S. No. 679 of 2002 whereby marriage between the appellant and respondent no. 1 has been dissolved and a direction has been issued against the respondent to make payment of Rs. 6,00,000/-(Rupees Six Lacs only) towards permanent alimony including Rs. 50,000/- (Rupees Fifty Thousand only) in lieu of jewellery and other house hold items.

2. Brief facts of the case are that the respondent no. 1 got married to the appellant according to Hindu rites on 21.04.2000. However, the relations between the parties to marriage did not remain cordial and they started living separately. Respondent no. 1 filed the petition for divorce under section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion before the Family Court, Dehradun, The appellant while contesting the said petition herself filed counter claim for decree of divorce and also for permanent alimony of Rs. 60,00,000/-.

3. The trial Court after perusing the pleadings of the parties, framed the following issues:

(1) Whether the petitioner is entitled to a decree of divorce on the facts alleged in the petition?

(2) Whether the court had no jurisdiction to try the suit?

(3) Whether the respondent (present appellant) is entitled to lump sum permanent alimony as claimed by her in the counter claim?

(4) Whether the respondent (present appellant) is entitled to a decree of divorce as alleged in her counter claim?

(5) To what relief, if any, the parties are entitled?

4. After recording the evidence and hearing the parties, the Tribunal came to the conclusion that the marriage between the parties has irretrievably broken down and they are entitled to a decree of dissolution of marriage as against each other. On issue no. 2, the trial Court held that it had jurisdiction to try the suit. On the point of permanent alimony, the trial Court found that the respondent (present appellant) /wife is entitled to permanent alimony of Rs. 5,50,000/-(Rupees Five Thousand Fifty Thousand only) and also Rs. 50,000/-(Rupees Fifty Thousand only) in lieu of jewellery and other house hold articles. Aggrieved by the said impugned judgment and order dated 05.08.2005, this appeal is preferred by the respondent (wife).

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellant at the out-set stated that he is not pressing this appeal as against the decree of dissolution of marriage passed by the trial Court. The only point on which this appeal is pressed is the amount of alimony, which according to the appellant, is insufficient.

7. From the evidence on record, it is clear that the respondent no. 1 is an Engineer with the Oil and Natural Gas Commission and that his basic pay was Rs. 16,095/-. His total salary including D.A., Conveyance Allowance, House Rent Allowance and all other allowances was

Rs. 31,693/- in the year 2003. His Pay-Slip further shows that there were certain deductions from his salary to the tune of Rs. 6,558/-. That being so, his carry home salary was Rs. 25,135/- per month. Since there is no issue out of the wed lock, the appellant has no other responsibility and has to maintain only herself. The annual alimony, therefore, in the circumstances of the case should be not less than Rs. 60,000/-. If the appellant deposits a sum of Rs. 10,00,000/- (Ten Lacs only) with the Bank on fixed deposit or any other long term deposit, she would not be getting less than Rs. 60,000/- per annum as interest. Therefore, we are of the view that lump sum amount of Rs. 5,50,000/- awarded by the learned Principal Judge, Family Court, is insufficient and Rs. 10,00,000/- (Ten Lacs only) as lump sum, would meet the ends of justice.

8. In the above circumstances, for the reasons as discussed above, the appeal deserves to be allowed to the extent that the amount of permanent alimony be enhanced from Rs. 5,50,000/- to Rs. 10,00,000/- only.

9. Learned counsel for the respondent raised objection that the appeal filed by the appellant is not maintainable as she has not filed appeal against the rejection of the part of her counter claim. We are of the view that since the impugned order is a consolidated and composite order passed in a divorce petition as well as counter claim and application filed under Section 25 of the Hindu Marriage Act, we do not find any substance in the objection.

10. Accordingly, the appeal is allowed and the respondent no. 1 shall pay a sum of Rs. 10,00,000/- (Rupees Ten Lacs only) apart from Rs. 50,000/- (Rupees Fifty Thousand only) in lieu of the jewellery and other house hold articles to the appellant, within a period of one month. The amount already deposited shall be adjusted against the amount of permanent alimony awarded by this order. Appeal as against decree of divorce is dismissed as not pressed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

25.04.2006 25.04.2006

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